



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-05  
**Specialist Prosecutor v. Salih Mustafa**

**Before:** **Trial Panel I**  
Judge Mappie Veldt-Foglia, Presiding  
Judge Roland Dekkers  
Judge Gilbert Bitti  
Judge Vladimir Mikula, Reserve

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 8 February 2023

**Language:** English

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**Public Redacted Version of 'Prosecution submissions for the review of segregation and related measures', filing F00133 dated 7 February 2022**

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## A. INTRODUCTION

1. Pursuant to Articles 21 and 41 of the Law,<sup>1</sup> Rules 23(7) and 56(6) of the Rules,<sup>2</sup> Rule 43(3)(c) of the Rules of Detention,<sup>3</sup> and in compliance with the order of the Trial Panel ('Panel'),<sup>4</sup> the Specialist Prosecutor's Office ('SPO') hereby files its submissions on the segregation and related measures applied to Salih MUSTAFA ('Accused').
2. The Accused's continued segregation remains lawful and necessary. The communication regime in force fully complies with the Accused's rights under Article 8 of the European Convention on Human Rights ('ECHR').

## B. SUBMISSIONS

3. On 2 August 2021, the Panel ordered that the Accused be segregated from other detainees.<sup>5</sup> On 10 September 2021, this measure was maintained with certain modifications concerning the communication regime,<sup>6</sup> and on 19 November 2021 its duration was extended for a further three months.<sup>7</sup> In these decisions, the Panel found segregation necessary to prevent unlawful dissemination by the Accused of the identities of SPO protected witnesses.<sup>8</sup> At the same time, the Panel indicated that this risk would not disappear with the testimony of the last protected SPO witness, [REDACTED], and [REDACTED].<sup>9</sup> The Panel reiterated that [REDACTED].<sup>10</sup>

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

<sup>3</sup> KSC-BD-08/Rev1, 23 September 2020 ('Detention Rules').

<sup>4</sup> Decision on the review of the segregation regime and other measures imposed on Salih Mustafa, KSC-BC-2020-05/F00262, Confidential, 19 November 2021 ('Second Segregation Decision'), para.22 (d).

<sup>5</sup> Confidential Redacted Version of Decision on Specialist Prosecutor's request for segregation and other measures, KSC-BC-2020-05/F00162/CONF/RED, Confidential, 2 August 2021 ('Segregation Decision'), para.43.

<sup>6</sup> Decision on the Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa, KSC-BC-2020-05/F00196, Confidential, 10 September 2021, ('Decision Maintaining Segregation'), para.26.

<sup>7</sup> Second Segregation Decision, para.22 (a).

<sup>8</sup> Segregation Decision, paras 23-24; Second Segregation Decision, para.15.

<sup>9</sup> Segregation Decision, para.22; Second Segregation Decision, para.15.

<sup>10</sup> Segregation Decision, para.22; Second Segregation Decision, para.15.

4. This reasoning continues to apply. Although all Prosecution witnesses [REDACTED], the majority of them [REDACTED] and the risk to them and their families remains high. These measures were granted on the basis of there being an objectively justifiable risk. [REDACTED].

5. [REDACTED]. [REDACTED],<sup>11</sup> [REDACTED]. [REDACTED].

6. [REDACTED].<sup>12</sup> [REDACTED]. [REDACTED].<sup>13</sup>

7. For these reasons, the segregation regime should remain in force.

8. With regard to the conditions of the segregation regime, the Accused receives meaningful human contact each day, daily visits by a Detention Officer, and visits by a Medical Officer.<sup>14</sup> The Registry personnel makes their best effort to engage the Accused in various activities.<sup>15</sup> Further, pursuant to the Second Segregation Decision, the Accused is permitted an additional two telephone calls per week with authorised family members on top of the already allotted one phone call per day,<sup>16</sup> and an additional two video visits per month on top of the already allotted ten visits per month.<sup>17</sup> These safeguards ensure that the rights of the Accused are upheld pursuant to Article 3 of the ECHR.<sup>18</sup>

### C. RELIEF REQUESTED

9. For the foregoing reasons, the SPO requests the Panel to maintain the existing segregation and related measures.

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<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

<sup>14</sup> Segregation Decision, paras 27-29; Fifth Monthly Registry Report on Segregation of the Accused, KSC-BC-2020-05/F00293, Confidential ('Fifth Registry Report'), paras 12-16.

<sup>15</sup> Second Segregation Decision, para.21; Fifth Registry Report, paras 12-16.

<sup>16</sup> Fifth Registry Report, para.18.

<sup>17</sup> Fifth Registry Report, para.20.

<sup>18</sup> ECtHR [GC], *Ramírez Sanchez v. France*, no. 59450/00, 4 July 2006, paras 131-135; ECtHR, *A.T. v. Estonia (No. 2)*, no. 70465/14, 13 November 2018, paras 79-83.

**Word count: 605**



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**Alex Whiting**

**Acting Specialist Prosecutor**

Wednesday, 8 February 2023

At The Hague, the Netherlands.